in necessaries may be said to be clothed with a public interest, the argument advanced by the court is wholly inapplicable. It is almost inconceivable that a supposedly intelligent court should decide a case of this sort without even considering the possibility of the business of handling necessaries being affected with a public interest, in time of war at least. The only possible explanation would seem to be that the court has become impressed with the reasoning of the often-rejected dissenting opinions, in *Munn* v. *Illinois,* 94 U. S. 113, and its successors, including *German Alliance Ins Co.* v. *Lewis,* 233 U. S. 389, in which it has been contended that a "public interest" is impossible apart from a public use. The contrary has been held so often by the Supreme Court of the United States that this view can scarcely be seriously considered at the present time. For a further discussion of the circumstances under which businesses and property may be said to be "affected with a public interest," see 19 MICH. L. REV. 74. See also *Weed & Co.* v. *Lockwood* (C. C. A., 2nd Circuit, 1920), 266 Fed. 785, *infra,* holding *contra* to the principal case.

CONSTITUTIONAL LAW—IS PROVISION OF LEVER ACT MAKING UNREASONABLE CHARGES FOR NECESSARIES UNLAWFUL VIOLATION OF SIXTH AMENDMENT TO FEDERAL CONSTITUTION?—A provision of the Lever Act makes it unlawful for any person wilfully to make any unjust or unreasonable charge in handling or dealing in necessaries, and provides a penalty of a fine and imprisonment for its violation. A demurrer was filed to an indictment under this provision on the ground that it violates the Sixth Amendment to the Federal Constitution providing that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation, inasmuch as no standard is established whereby a person can determine in advance what specific acts will be held to be criminal. *Held,* the provision is void. *United States* v. *Bernstein* (Neb., D. C., 1920), 267 Fed. 295. On a bill to restrain the United States district attorney from proceeding on a similar indictment, *held,* the provision is valid. *Weed & Co.* v. *Lockwood* (C. C. A., 2nd Cir., 1920), 266 Fed. 785.

*Louisville & N. R. Co.* v. *R. R. Comm. of Tenn.,* 19 Fed. 679; *Louisville & N. R. Co.* v. *Commonwealth,* 99 Ky. 132, and *Tozer* v. *U. S.,* 52 Fed. 917, are cited in support of the first principal case. In none of these cases was the objection made that the particular statute involved violated the Sixth Amendment. The first two cases were quasi-criminal actions to recover penalties for violations of statutes making unjust discriminations and the charging of unreasonable rates unlawful. In the first of these the statute was declared void, apparently on the ground that it was a delegation to the jury of the law-making power. In the Kentucky case the objection was made and upheld that the failure to provide a standard of conduct violates "due process." The *Tozer* case seems to rest solely upon a statement by Justice Brewer to the effect that persons are entitled to know in advance whether or not particular acts constitute crimes. See also *U. S.* v. *Capital Traction Co.,* 34 App. (D. C.) 592; *Czarra* v. *Board of Medical Examiners,*

25 App. (D. C.) 443. In all of these cases the point stressed particularly is that a contrary holding would make the question as to whether specific acts constitute crimes entirely dependent upon the whims of juries, and that uniformity would be impossible. The court in the first principal case admits that "it must be conceded that many generic, broad descriptions have become definite and are upheld and enforced, and it is not in all cases easy to determine when an accused is informed of the nature and cause of the accusation," but insists that no Supreme Court adjudications conflict with its conclusion that the Sixth Amendment is contravened, and the law is therefore invalid. The second principal case points out that practically all common-law crimes were originally defined by the common opinion of the people, which found expression in the judgment of juries and courts, and discusses a number of situations arising in both civil and criminal cases where questions of fact determining liability or guilt, as the case may be, are determined in accordance with what the jury deems reasonable. Anti-trust acts making "unfair competition" and "restraint of trade" unlawful have been objected to, both in civil and criminal actions, on the ground that these phrases are so indefinite as to violate "due process." These provisions have been sustained. *Standard Oil Co.* v. *U. S.*, 221 U. S. 1, at 69; *U. S.* v. *Am. Tobacco Co.*, 221 U. S. 106; *Sears-Roebuck Co.* v. *Fed. Trade Comm.*, 258 Fed. 301; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86; *Nash* v. *U. S.*, 229 U. S. 373; *U. S.* v. *New Departure Mfg. Co.*, 204 Fed. 107; *U. S.* v. *Patterson*, 201 Fed. 697; *U. S.* v. *Winslow*, 195 Fed. 578. In *Katzman* v. *Commonwealth*, 140 Ky. 124, a statute was held valid making failure on the part of druggists to use reasonable care to satisfy themselves that certain drugs they might sell were to be used for legitimate purposes a criminal offense, and in *State* v. *Fox*, 71 Wash. 185, a statute making unlawful the publishing of matter "which shall tend to encourage disrespect for law" was objected to as uncertain, and sustained. Affirmed in *Fox* v. *Washington*, 236 U. S. 273. To say that the Sixth Amendment confers the absolute right in all instances to know in advance whether or not specific acts constitute crimes would extend its meaning considerably beyond the logical sense of the words used. As Justice Holmes says in *Nash* v. *U. S.*, *supra*, "* * * the law is full of instances where a man's fate depends on his estimating rightly—that is, as the jury subsequently estimates it—some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. * * * 'The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct.' 1 EAST. P. C. 262." For note discussing statutes making it an offense to act "unreasonably," see 18 MICH. L. REV. 810, 19 MICH. L. REV. 218.

CONTRACTS—MUTUAL PROMISES—MATERIALITY OF BREACH—RIGHT OF RESCISSION—QUESTION OF LAW OR FACT.—The city agreed to deliver all the rubbish collected from the streets at fourteen dumps, where the plaintiff was to load the same upon scows, in return for which he was to have the privi-